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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re ROBBIE S., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBBIE S.,

Defendant and Appellant.

A132725

(Alameda County
Super. Ct. No. SJ07006984)

Robbie S. appeals from a July 6, 2011 dispositional order of the juvenile court removing him from his mother's home and committing him to the custody and control of the probation department, for placement in foster care or a group home. Appointed appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, which raises no issue for appeal and asks that we conduct an independent review of the record.¹ (See *People v. Kelly* (2006) 40 Cal.4th 106, 124.)

We have examined the entire record in accordance with *People v. Wende*. For the reasons set forth below, we agree with counsel that no arguable issue exists on appeal and affirm the juvenile court's dispositional order.

FACTUAL AND PROCEDURAL BACKGROUND

On May 21, 2007, a petition was filed under Welfare and Institutions Code section 602, subdivision (a) (hereafter, section 602(a)), alleging that 12-year old Robbie

¹ Robbie was informed of his right to file a supplemental brief but has not done so.

had committed two misdemeanor counts of battery (Pen. Code, § 242) and one misdemeanor count of assault with a weapon (Pen. Code, § 245, subd. (a)(1)) by headbutting a teacher and throwing a chair at him.² Robbie admitted one count of misdemeanor battery and the remaining counts were dismissed. At a June 20, 2007 disposition hearing, the juvenile court adjudged him a ward of the court and ordered in-home placement with six months probation, subject to various terms and conditions. Robbie successfully completed probation, and on December 19, 2007, the court terminated probation and dismissed the wardship.

Almost a year later, on December 1, 2008, Robbie was arrested in connection with another incident at school: When a staff member tried to escort Robbie to the quiet room for swearing, Robbie spit in his face and punched him in the nose. Shortly thereafter, a reopened petition was filed under section 602 (a), alleging misdemeanor counts of battery on school property (Pen. Code, § 243.2), battery (Pen. Code, § 242), and disturbing the peace (Pen. Code, § 415, subd. (3)).

Four months later, an amendment to the petition was filed (§ 602 (a)), adding misdemeanor counts of battery on school property (Pen. Code, § 243.2) and resisting arrest (Pen. Code, § 148, subd. (a)), based on an April 17, 2009 incident in which Robbie shoved a staff member into a wall, causing her glasses to break and cut her face. He admitted the count for resisting arrest, and the other counts were dismissed. At a disposition hearing on May 29, 2009, the juvenile court continued the wardship and ordered in-home placement with 12 months probation, subject to various terms and conditions.

A week later, Robbie was taken into custody by police who saw him fleeing the scene of a burglary alarm. A subsequent petition was filed (§ 602 (a)), alleging a felony count of first degree residential burglary (Pen. Code, § 459) and misdemeanor counts of trespass (Pen. Code, § 602, subd. (m)), and resisting arrest (Pen. Code, § 148, subd. (a)). The felony count was later amended to one count of receiving stolen property (Pen. Code,

² All undesignated statutory references are to the Welfare and Institutions Code.

§ 496, subd. (a)). Robbie admitted this count, as amended, and the remaining counts were dismissed. At a disposition hearing on July 7, 2009, the juvenile court continued the wardship and its existing order, with additional terms and conditions.

In the following months, Robbie left school without permission three times, failed to follow directions, and headbutted a staff member. His mother reported he was not listening to her and was “very defiant.” The juvenile court admonished him at an October 2, 2009 progress report hearing, and he showed improvement initially. Two weeks later, however, his behavior deteriorated. The probation officer noted five incidents in October 2009, in which Robbie threatened or physically assaulted staff members and left school. On one occasion, he returned to school smelling of marijuana. At a progress report hearing on October 16, 2009, the juvenile court admonished Robbie, added drug conditions to his probation and set the matter for a progress report on December 8, 2009.

Six days before that hearing, Robbie was arrested for headbutting a staff member who was trying to prevent him from leaving school. A subsequent petition was filed (§ 602 (a)), alleging misdemeanor counts of assault on a school employee (Pen. Code, § 243.6), and battery (Pen. Code, § 242). Robbie admitted the simple battery count, and the remaining count was dismissed. At a December 23, 2009 disposition hearing, the juvenile court continued the wardship and its existing order and ordered community service and a restitution fine.

Less than three months later, on March 5, 2010, the probation officer filed a supplemental petition for a more restrictive placement (§ 777, subd. (a)). (See *ibid.* [alleged violation of probation condition not amounting to a crime].) The petition alleged that Robbie, now 15-years old, had tested positive for THC three times since October 2009, had assaulted a staff member at his school on January 26, 2010, and continued to violate school rules by wearing the color red and either skipping school, arriving late, or leaving without permission. Shortly

thereafter, another section 777 petition was filed, adding allegations that Robbie assaulted the director of his school on March 10, 2010, and that he was beyond his mother's control. Robbie admitted the section 777 allegations, and the juvenile court ordered a guidance clinic report.

The guidance clinic psychologist confirmed a diagnosis of oppositional defiant disorder and concluded Robbie had serious problems with anger management, impulse control and regulating emotions. He found Robbie's potential for violence towards others was quite high and noted a risk that these responses would escalate as Robbie got older.

In May 2010, the probation officer noted great improvement in Robbie's behavior at school and positive changes overall. In August 2010, however, Robbie missed two probation appointments, bit a staff member at school, and jumped the fence and ran when he was instructed to talk with the deputy sheriff about the incident. By August 2010, he was making gang-related comments at school, leaving the classroom, and not following directions.

Before disposition of the section 777 petition, another subsequent petition was filed (§ 602 (a)), alleging a misdemeanor count of brandishing a deadly weapon (Pen. Code, § 417, subd. (a)(1)) and felony counts of participation in gang activity (Pen. Code, § 186.22, subd. (a)) and criminal threats (Pen. Code, § 422). The police report indicates that, on August 6, 2010, Robbie and three gang members surrounded another male and one of them pulled out a nine-millimeter semiautomatic handgun. Robbie admitted the criminal threats count "with level open," and the other counts were dismissed.

At a September 1, 2010 disposition hearing on both the March 12, 2010, section 777 petition and the August 10, 2010, section 602 petition, the juvenile court deemed the criminal threats offense a felony, set aside its existing order and ordered out-of-home placement. The court committed Robbie to the custody of the probation officer for placement in a suitable foster home, private institution, or group home, calculated his maximum period of confinement at

four years, six months, and awarded him credit for 239 days in custody. On a referral by the court, Robbie was accepted by the Family Preservation Unit (FPU) and permitted to reside with his mother under the FPU's supervision, with GPS monitoring.

The court continued Robbie on probation, subject to various terms and conditions, including participation in a COPS Aggressive Offender class, gang awareness counseling, and a 7 p.m. curfew. In addition, he was precluded from associating with gang members, wearing gang attire or tattoos, and displaying gang symbols.

In a December 2010 report, the probation officer noted that Robbie had been leaving class without permission but was doing well since the school transferred him to another site with one-on-one instruction. Robbie's therapist noticed that he had gang tattoos, but the probation officer could not determine when he got them, so the court ordered them photographed and precluded him from getting any more.

Robbie continued to do well in school and at home and test negative for drugs. His behavior substantially improved, and he was making positive progress.

At a March 17, 2011 modification hearing, the juvenile court set aside its prior placement order and ordered a less restrictive in-home placement, subject to the same terms and conditions of probation. The probation officer's report indicates that Robbie had no behavioral issues, was consistently respectful to school staff, and had made substantial progress toward alleviating the problems requiring placement.³

³ The probation officer's report did not address a March 8, 2011 email from Robbie's therapist reporting that he had "done little to no work" since February, was failing all his classes, and left campus when his teacher took away his laptop until he completed his work.

When Robbie appeared in court for a progress report three months later, he was remanded to the Juvenile Justice Center based on his mother's report that he had missed curfew for five days, was viewing Norteno material on the internet, and was being disrespectful to her. Based on this conduct, the probation officer filed a supplemental petition for a more restrictive placement (§ 777, subd. (a)). At a detention hearing the next day, defense counsel indicated that Robbie had missed curfew because he was working a part-time job in the evenings. Counsel said Robbie's mother knew and approved of the job but wanted to make a point—that Robbie had to obtain her approval before missing curfew and needed to let her know where he was. Robbie admitted the allegations in the petition, and the juvenile court continued his detention pending disposition. In response to his mother's request for a mental health evaluation (as he was "having many issues in school and with the staff"), the juvenile court ordered another guidance clinic report.

The guidance clinic report noted that Robbie had "areas of success in his academic work and social adjustment over the last year," was adjusting adequately at home, benefitting from one-on-one instruction, and having a positive experience with his therapist. The psychologist recommended returning Robbie to his mother.

The probation officer did not believe the current violations warranted out-of-home placement and recommended that Robbie be returned home with more intensive supervision.

At the July 6, 2011 disposition hearing, the juvenile court rejected the recommendations of the guidance clinic and the probation officer. The court expressed concern that the appropriate level of supervision and services was not in place and said it believed Robbie had the potential to succeed, but "right now [he] needs a little extra help in getting there." The court concluded continuance in the home was contrary to Robbie's welfare and committed him to the probation department's care and custody for placement in a suitable foster or group home.

The court directed the probation department to assess Robbie for placement with his mother under FPU supervision. Pending that assessment, the court gave the probation officer discretion to release Robbie to his mother on GPS monitoring. The court told Robbie he was being given another chance to remain at home, but “if you mess up this opportunity, you are going to be back in custody and you’re probably going to an out-of-home placement.”⁴

Robbie filed a timely notice of appeal from the July 6, 2011 dispositional order.

DISCUSSION

Neither appointed counsel nor minor has identified any issue for our review. Upon our own independent review of the record, we agree that none exists. (*People v. Wende, supra*, 25 Cal.3d 436.) Robbie was represented by counsel throughout the proceedings. The juvenile court found out-of-home placement appropriate after he admitted violating his probation a second time. In accepting his plea, the court properly advised him of his constitutional rights, and he voluntarily waived each of them. The court also advised him of the consequences of his admission, it was made freely and voluntarily with the consent of counsel, and counsel stipulated that there was a factual basis for the plea. The juvenile court concluded, in accordance with the probation officer’s report, that Robbie needed more intensive supervision to help him succeed, and substantial evidence supports this conclusion. The record indicates that Robbie had a long history of delinquency but had responded well to a more restrictive placement, and that only three months after the court modified its order to a less restrictive placement, he was beginning to lose focus. He was disregarding his mother’s authority and the probation condition requiring him to obtain permission before exceeding curfew, and he was maintaining a connection to the Norteno gang. In addition, the juvenile court effectively gave Robbie a final opportunity to avoid out-of-home placement by ordering an FPU assessment. We conclude that this disposition was within the juvenile court’s discretion. (§§ 726,

⁴ The record does not indicate whether Robbie was accepted into the FPU program.

727, subd. (a), 730, subd. (a).) We note that the court considered the appropriate dispositional factors (section 725.5; *In re John F.* (1983) 150 Cal.App.3d 182, 185), and made the findings required by section 726, subdivision (a).

Having ensured that minor received adequate and effective appellate review, we affirm the juvenile court's dispositional order. (*People v. Kelly*, *supra*, 40 Cal.4th at pp. 112-113; *People v. Wende*, *supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment is affirmed.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.